Supreme Court of the United States

OCTOBER TERM, 1948.

No. 401 .

CITY BANK FARMERS TRUST COMPANY, as ancillary executor of the last will and testament of Edwin Prestage, deceased, and as trustee under an agreement made by said deceased dated July 31, 1939,

Petitioner,

v.

WILLIAM J. PEDRICK, United States Collector of Internal Revenue for the Second District of New York,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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THE COURT PRESS, N. Y. C.

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WILLIAM J. PEDRICK, United States Collector of Internal Revenue for the Second District of New York,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit and Supporting Brief.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner above named prays that a writ of certiorari issue to review the judgment [R. 96] of the United States Court of Appeals for the Second Circuit entered in this cause on the 27th day of May, 1948. A petition for a rehearing was timely filed in the Court of Appeals on June 9, 1948, pursuant to Rule XXVIII of said Court, and denied on August 13, 1948 [R. 98-105, 107].

STATEMENT OF MATTER INVOLVED AND QUESTION PRESENTED.

This case relates to the Federal Estate Tax. It is an action to recover an overpayment of such tax of approximately $8,500. The statute exempts from the

tax bank deposits maintained in this country by or for the benefit of non-resident aliens who are not engaged in business here at the time of their death. The case involves the question of whether the exemption is applicable to bank deposits that are held by trustees for the benefit of such aliens, under *inter vivos* trusts which they created and which are includible in their statutory estate for purposes of the tax. The decision below in effect limits the exemption to bank deposits in the alien's probate estate.

In 1921 (when the exemption here in question was originally enacted) this country was in a serious business depression. Bank lending rates were very high.[1] London was at the time the magnet for short-term liquid capital from most of the world. By inducing foreigners to send such funds to banks in this country, the volume of bank credit available for loans to American industry, commerce and agriculture would be increased, and this in turn would tend to lower the cost of borrowing and thus help to stimulate business activity. Accordingly, bank deposits in this country were exempted from federal estate tax in the case of foreigners residing abroad who were not engaged in business in the United States and who, therefore, ordinarily would have no need for sending their money over here.[2]

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1 In June, 1921, the interest rate customarily charged on customers' loans by banks in our principal cities was 6.81%; the rate in June of the current year was 2.56% (Banking and Monetary Statistics [Federal Reserve] Table 124, p. 463; Federal Reserve Bulletin, September, 1948, p. 1145).

2 It was stated in the Senate Committee Report that the exemption was designed to help domestic banks compete with foreign banks. Since the exemption also extends to bank deposits maintained by foreigners with foreign banks *in this country*, it is evident that the competitive assistance referred to was directed to bank deposits maintained by foreigners in foreign banks, *abroad*. The primary purpose was to attract to banks in this country, money held by foreigners abroad, thereby making it available to such banks for loans to their customers (Senate Report No. 275, 67th Congress, First Session, relating to Internal Revenue Bill of 1921 [Cum. Bul. 1939-1, Part 2, p. 199]).

The statutory provisions involved have remained unchanged since they were first adopted in 1921 and are now found in Section 863 of the Internal Revenue Code, reading as follows:

> "SEC. 863. PROPERTY WITHOUT THE UNITED STATES.
>
> The following items shall not, for the purpose of this subchapter, be deemed property within the United States:
>
> (a) * * * [not relevant.]
>
> (b) *Bank Deposits.* Any moneys deposited with any person carrying on the banking business, by or for a non-resident not a citizen of the United States who was not engaged in business in the United States at the time of his death."

The intent of the Section is simply and clearly stated in the "Instructions" issued by the Treasury Department which appear on the printed form of Estate Tax Return it furnishes to taxpayers (Form 706). In so far as material, they are as follows (reverse side of Sheet XX):

> "*Additional Instructions for Estates of Nonresidents Not Citizens of the United States*
>
> * * * *
>
> Except as hereinafter provided, the following rules are applicable in determining whether property is situated in the United States:
>
> * * * *
>
> However, pursuant to treaty or statute, the following classes of property are regarded as *not* situated in the United States:
>
> * * * *

> (2) In the case of a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death, (a) bank deposits and (b) bonds, notes, and certificates of indebtedness of the United States * * *."

That the foregoing administrative construction of the statute is correct, is shown in the annexed brief.

The facts in the case are not in dispute and practically all of them have been stipulated [R. 37]. The decedent was a British subject, residing in England and not engaged in business in the United States at the time of his death [R. 38]. Prior to July 31, 1939, he maintained a bank deposit in this country of approximately $80,000 with The National City Bank of New York [R. 38]. On that date, in order to protect his bank deposit in case of a European war, he transfered it to a trustee in this country, to hold in trust for his benefit, and after his death for the benefit of his widow [R. 11, 38]. The trust agreement required the trustee to retain the property as a bank deposit unless the decedent otherwise directed, which he did not do.[3] The decedent also reserved the right to revoke the trust with the consent of the trustee, and there were provisions in the trust agreement the effect of which was to require the trustee to consent to such revocation, whenever it was for the decedent's benefit [R. 16, f. 47].

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3 Article 2 of the trust agreement provides in part as follows:

"During the Settlor's life, except in the event of his disability, such powers shall be exercised by the Trustee *in such manner only as the Settlor shall from time to time direct* by an instrument in writing delivered to the Trustee and *unless otherwise directed by the Settlor* in writing as aforesaid, *the Trustee shall retain the property* (including, but not by way of limitation, cash) from time to time held by it hereunder" [R. 13, 14]. (Italics supplied.)

Upon the creation of the trust, the said bank deposit was transferred from The National City Bank of New York to the banking department of City Bank Farmers Trust Company (the trustee), but *both* the lower courts agreed that this did not affect its character as a "bank deposit", which continued until the decedent's death [R. 79, f. 237, p. (lower half) 93].

However, the Court of Appeals (reversing the District Court) held that the exemption is limited to bank deposits of which the decedent himself is the owner at the time of his death, and does not apply to a bank deposit held for his benefit by his trustee under a trust that is includible in his statutory estate for purposes of the tax. In effect, therefore, according to the decision below the said exemption applies exclusively to bank deposits which are part of the decedent's *probate* estate and does not apply to those which are only part of his *statutory* estate for purposes of the tax.[3a]

Such a differentiation is clearly contrary to the *scheme* of the federal estate tax statute, *as a whole.* That much is plain. *But in the present instance there would be no reason for Congress to depart from the statutory scheme; because as long as the foreigner's money was in a bank deposit with an American bank over here, it was equally available to such bank for loans to American business, irrespective of whether technically, the legal title to the bank deposit was in the foreigner himself, or in his trustee for his benefit.*

So far as we can find, the differentiation made below is without precedent in the death tax legislation of this or any other country. It leads to an absurd

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3a The Court left open the question of whether there would be an exception to the above in the case of a decedent who had an absolute right to revoke the trust and thus was for all practical purposes the owner of the trust property, but it indicated a doubt as to whether even such an exception existed [R. 94].

result. For it imposes a *greater* tax in respect of property of which the decedent is merely *deemed* to be the owner, than would be imposed if he were *in fact* the owner of the property. Such, surely, was not the intention of Congress.[4]

Moreover, by Section 4 of the Victory Liberty Loan Act (40 Stat. 1309), an analogous exemption from federal estate tax was conferred in 1919, in respect of United States government bonds "beneficially owned" by a non-resident alien who was not engaged in business in the United States.[5] More than twenty years ago it was judicially declared that the said exemption applies to United States bonds held in a trust like the present (*Farmers' L. & T. Co.* v. *Bowers*, 22 F. (2d) 464). The Treasury Department has acquiesced

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4 The trust involved in *Helvering* v. *City Bank Farmers Trust Co.*, 296 U. S. 85, was substantially identical with the instant trust. This Court held that the statutory provisions subjecting to estate tax the property in such a trust, were designed to place such property in an "equivalent" status for tax purposes with property which the decedent actually owned at his death. The Court said at page 90:

> "The inquiry is whether it is arbitrary and unreasonable to prescribe for the future that, as respects the estate tax, a transfer, complete when made, shall be deemed complete only at the transferor's death, if he reserves power to revoke or alter exercisable jointly with another.
>
> * * * Congress may adopt a measure reasonably calculated to prevent avoidance of a tax. * * * A legislative declaration that a status of the taxpayer's creation shall, in the application of the tax, be deemed the *equivalent* of another status falling normally within the scope of the taxing power, *if reasonably requisite to prevent evasion*, does not take property without due process." (Italics supplied.) (See also, *Helvering* v. *Bullard*, 303 U. S. 297.)

5 This exemption had a similar objective as the exemption later conferred on "bank deposits". In the debate in the House of Representatives on Section 4 of the Victory Liberty Loan Act, the following colloquy occurred:

> "Mr. Moore of Pensylvania—Let us see if we clearly understand the purpose of this section. It is intended to encourage the purchase by aliens of American securities, and to that extent it would relieve the pressure upon the American security field.
>
> Mr. Kitchin—That is true.
>
> Mr. Moore of Pennsylvania—Whereas it is contended that the bonds are selling below par in the United States, and if we can find a foreign market for those bonds we induce the foreigner to buy the bonds, with the understanding that so far as his holdings are concerned, they are tax free (57 Cong. Rec. 4294, [1919])."

in that decision since it was rendered in 1927; and in the above quoted "Instructions" it puts "bank deposits" on the same footing with United States bonds, for the purposes of the said exemptions.[6]

The court below reached the incongruous result pointed out above, by applying the rule of strict construction which generally governs tax exemption statutes. But although, at first glance, the said section may appear to be a tax exemption statute, a closer examination reveals that such is not its true nature. *For here the statutory provisions in question were primarily addressed to persons and property that were at the time beyond the reach of the taxing jurisdiction of the United States.* Obviously, money kept on deposit in a foreign bank abroad by a non-resident alien not engaged in business in the United States, is *immune* from taxation in this country. *In effect, therefore, the instant statute merely promised to continue a pre-existing tax immunity that was not dependent upon the grace of the sovereign.* In this respect the said statute differs materially from a "tax exemption" statute as commonly understood.

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6 The reason the tax was initially assessed in the present case was because the money in question was on deposit with the Trust Company itself and not in another bank. It was thus erroneously concluded by the Revenue Agent that the *currency* itself was held by the Trust Company in its capacity *as trustee* (in which case it obviously would not constitute a "bank deposit") and that the case was, therefore, governed by an opinion rendered in 1940 by the Chief Counsel of the Bureau of Internal Revenue (G. C. M. 22419, C. B. 1941-2, p. 288). The District Court remarked in its opinion [R. 73, f. 217] that if the money had been deposited by the trustee institution in another bank, the Bureau probably would not even have claimed that it was subject to tax. On the trial it was shown that the money in question was on deposit pursuant to Section 100-b of the Banking Law of the State of New York, with the banking department of City Bank Farmers Trust Company in a "bank deposit" in the name of "City Bank Farmers Trust Company, Trustee, Edwin Prestage u/a 7/31/39 with Edwin Prestage", and that under New York law such a deposit was precisely the same as if the money had been deposited in another bank. (*Matter of Howell*, 237 App. Div. 56.) [R. 39, 77] On the appeal the government abandoned the ground on which the tax was initially assessed, and fell back upon the alternative contention which it had made in the District Court, viz., that the said exemption does not apply to *any* "bank deposit" held in *any* trust.

Moreover, the rule of construction applied below is not to be pushed to the point of unreasonableness (26 R. C. L. 314). It is subordinate to the paramount rule that the purpose and intent of the legislature as ascertained from the *whole* statute, must be given effect. In *Trotter* v. *Tennessee,* 290 U. S. 354, 356, the late Justice Cardozo, speaking for this Court, stated the rule as follows:

> "Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced. On the other hand, they are not to be read so grudgingly as to thwart the purpose of the lawmakers."

As we have seen, the rule as applied below leads to an unreasonable result, and thwarts the underlying legislative purpose of according equal treatment to property owned by the decedent and property which is regarded as being owned by him for purposes of the tax.

Finally, as indicated above, the statute in question was in substance a promise made to foreigners by our government in order to induce them to send their money over here. Surely, they were reasonably entitled to construe our promise as our Treasury Department itself has done in its said "Instructions". They had no reason to suppose that without calling attention or even alluding to it, Congress would take such a revolutionary step in the field of death taxation as to impose a greater tax on property which is only *fictionally* regarded as belonging to the deceased for tax purposes, than would be imposed if his ownership were real and actual. As a matter of simple fairness, our promise should be performed as reasonably understood by those to whom it was addressed and whose conduct it was designed to influence.

In the case of treaties, we have long construed our international engagements in a broad and liberal spirit (5 *Hackworth, Dig. of Int. Law,* 255, 256), and it is not in our tradition to differentiate in this respect between our promises to foreign governments and our promises to their peoples.

Specification of Errors.

The Court of Appeals erred:

1. In holding that the bank deposit which on the date of the decedent's death formed part of the trust which he created by the agreement dated July 31, 1939, constituted property situated within the United States for purposes of the federal estate tax.

2. In holding that the said bank deposit was includible in the decedent's gross taxable estate for federal estate tax purposes.

3. In holding that the rule of situs laid down by Section 863(b) of the Internal Revenue Code applies only to bank deposits of which the decedent was the actual owner at the time of his death and which thus are part of his probate estate, and does not apply to bank deposits held in trust for his benefit of which he is deemed to be the owner for purposes of the tax.

Reasons for Granting the Writ.

1. The question involved is an important one in the administration of the Internal Revenue laws which should be decided by this Court, because both before and during the war many non-resident aliens who were not engaged in business over here, transferred their bank deposits in this country to trustees

so as to protect them from confiscation if their country was invaded. A large number of such aliens must have since died either in concentration camps or as a result of bombings or from natural causes, so that the said question arises in their estates.

2. The decision of the Court of Appeals would appear to be in conflict with the decision of this Court in *Helvering* v. *City Bank Farmers Trust Company*, 296 U. S. 85, in which it was held that the statutory provisions subjecting to estate tax property in an *inter vivos* trust like the one in the case at bar, were designed to place such property in the same position for tax purposes as property which the decedent actually owned at his death.

3. Lastly, the narrow and "isolationist" construction given to the statute by the lower court puts our government in the position before the rest of the world of reneging on its promise of tax immunity as reasonably understood by those to whom it was addressed and whose conduct it was designed to influence. There are special and important reasons why this Court should decide a question of this international nature in these troubled times when so much depends on our having the full confidence of other nations and their peoples.

WHEREFORE, it is respectfully submitted that this petition should be granted.

Dated, November 5th, 1948.

Respectfully submitted,

CHARLES ANGULO,
Attorney for Petitioner.

BRIEF IN SUPPORT OF THE PETITION.

Opinion Below.

The opinion of the Court of Appeals is reported in 168 F. (2d) 618 [R. 91]; the District Court's opinion is reported in 69 F. Supp. 517 [R. 69].

Jurisdiction.

The jurisdiction of this Court to issue the writ rests on Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. The judgment of the Court of Appeals was entered on May 27, 1948 [R. 96]. A petition for rehearing was timely filed on June 9, 1948 [R. 98-105] pursuant to Rule XXVIII of the said Court of Appeals; and said petition was denied on August 13, 1948 [R. 107].

Statement.

A statement of the facts and of the questions presented and of the assigned errors will be found in the petition.

Statute Involved.

The statute involved is Section 863(b) of the Internal Revenue Code which is printed on page 3 of the petition.

Argument.

The administrative construction of Section 863(b) contained in the Treasury Instructions is correct.

In the annexed petition, we have quoted (pp. 3, 4) the relevant Instructions issued by the Treasury Department governing the preparation of Federal Estate Tax Returns in estates of non-resident alien decedents. Those Instructions (which have practically the same standing as Treasury Regulations) construe Section 863(b) to mean that in the case of an estate of a non-resident alien who was not engaged in business in the United States at the time of his death, bank deposits are regarded as *not* having a situs in this country. The rule as stated by the Treasury is absolute and contains no hint or suggestion of the distinction made below between bank deposits that were owned by the decedent himself and thus are part of his probate estate, and those that are deemed to have been owned by him and thus form part of his statutory estate for purposes of the tax.

The above administrative interpretation of Section 863(b) is the practical, "common sense" construction of the man in the street. We propose here to show that it is also the correct legal construction.

It is apparent that the general scheme of the federal estate tax statute viewed as a whole, is to accord equal treatment to property of which the decedent is actually the owner at the time of his death, and property of which he is deemed to be the owner at that time for purposes of the tax. This is basic; and it is also patently reasonable. It must follow, therefore, that wherever possible, particular provisions of the stat-

ute are to be construed so as to conform to that basic statutory scheme.

As we have shown in the annexed petition Section 863(b) was designed to attract to banks in this country money held by foreigners abroad, thereby making it available to American banks for loans to American business. Now, so long as such money remains as a bank deposit in an American bank over here, it is equally available to the depositary bank for loans to American business, irrespective of whether technically the legal title to the bank deposit is vested in the foreigner himself, or in his trustee for his benefit. Thus there would be no reason for Congress to depart from the basic statutory scheme in enacting Section 863(b).

Moreover, Section 863(b) purports on its face to lay down the governing rule for fixing the situs of bank deposits in estates of non-resident aliens not engaged in business in the United States at the time of death, and logically one would expect the same rule of situs to apply to all taxable occasions within the purview of the statute.

By its terms Section 863(b) deals with two situations. On the one hand it refers to "moneys deposited *by*" the decedent; on the other hand, it also refers to "moneys deposited *for*" the decedent. Now, money deposited in the bank account of the decedent during his life, whether deposited by the decedent himself or by someone else on his instructions or otherwise by his authority, constitutes from a legal standpoint "moneys deposited *by*" the decedent. Therefore, some additional meaning must be attributed to the other expression "moneys deposited *for*" the decedent,—unless we are to disregard the word "for" as mere surplusage

which, of course, would be contrary to a fundamental rule of statutory construction.

The word "for" is frequently used as meaning "for the benefit of". That is a phrase of wide scope. There would be no warrant in law or usage for confining its meaning to an *agency* relationship exclusively, that is to say, to a bank deposit which is held for the benefit of the decedent, by his *agent*. A *trustee* also holds property for the benefit of others. Thus, for example, in *Brown* v. *Fletcher*, 235 U. S. 589, this Court said, at page 598:

> "In either case, and whatever its form, the trust property was held by the trustee,—not in opposition to the *cestui que trust* so as to give him a chose in action, but,—in possession *for his benefit* in accordance with the terms of the testator's will." (Italics supplied.)

Therefore, under accepted legal terminology a bank deposit is held *for the benefit of* the decedent where it is held in a trust of which he is beneficiary.

Thus Section 863(b) applies alike, irrespective of whether the rights and interests of the decedent in the bank deposit are from a technical standpoint, legal or equitable in nature; in either case they are regarded as not having a situs in the United States for purposes of the tax.

So construed, Section 863(b) conforms to the basic scheme of the federal tax statute as a whole; and, furthermore, we thereby avoid imputing to Congress the unreasonable intention of imposing, in respect of property of which the decedent is merely deemed to be the owner, a greater tax than would be imposed if he were in fact the owner of the property.

The court below seems to have misapprehended the question involved.

At the end of its opinion the Court of Appeals said [R. 95]:

> "A deposit so hedged about with restrictions [*i. e.*, the provisions whereby the deposit could only be withdrawn *from the trust* with the trustee's consent] is not properly a bank deposit at all; at least there is no reason to suppose that it is within the scope of §863(b)."

We did *not* contend, of course, that the relationship between the *trustee* and the *cestui que trust* was a "banker-depositor" relationship resulting in a "bank deposit". The "banker-depositor" relationship was between the banking department of the Trust Company (that is to say, the Trust Company in its *individual* capacity) on the one hand, and the Trust Company in its capacity *as trustee* on the other. (Under New York law such relationship was the same as if the trustee institution maintained the deposit with a different bank. *Matter of Howell*, 237 App. Div. 56.) Thus the "bank deposit" in question was merely one of the items of property constituting the trust *res* in the hands of the trustee. *That* "bank deposit" was *not* in any sense "hedged about with restrictions", as between the depositor and the depositary bank. In other words, it was subject to withdrawal at any time on the depositor's order like any other bank deposit.

Presumably what the Court meant in the above quoted passage was that the "restrictions" on the decedent's right to revoke the trust prevented his being regarded as the *owner* of the bank deposit. However, as we have seen, the statute not only exempts bank

deposits of which the deceased was the owner, but also bank deposits that are held *for his benefit.*

The "restrictions" referred to in the Court's opinion do not negative or contradict that in the present case the trust *res* (including the said "bank deposit") was being held *for the benefit* of the decedent. Indeed, the said "restrictions" were inserted in the trust deed *for the benefit* of the decedent. For the trustee in determining whether or not to give its consent to a proposed revocation by the decedent was bound to consider only the decedent's interest, that is to say, whether it was *for his benefit* [R. 16].

Respectfully submitted,

CHARLES ANGULO,
Attorney for Petitioner.

November 5th, 1948.